

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERTO ARMENDARIZ-LOZANO	§	
v.	§	CIVIL ACTION NO. 6:08cv228
		(Crim. No. 6:07cr68-1)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Roberto Armendariz-Lozano, proceeding *pro se*, filed this motion to vacate or correct sentence under 28 U.S.C. §2255 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Armendariz was convicted on December 14, 2007, on his plea of guilty to one count of being a criminal alien unlawfully in the United States after deportation. He received a sentence of 70 months in prison. Armendariz did not take a direct appeal, but filed this motion to vacate or correct his sentence on June 5, 2008. The motion was dismissed in March of 2009, but was reopened in July of 2009 for the purpose of determining the merits of the petitioner's claim that he asked his attorney to file a notice of appeal, but no such notice was filed.

After the case was reopened, counsel was appointed to represent Armendariz and an evidentiary hearing was conducted. Following this hearing, the Magistrate Judge issued a Report recommending that the Court find that Armendariz did not request that counsel file a notice of appeal on his behalf, and that the motion to vacate or correct sentence be denied. No objections to this Report have been filed; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from

appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence, which was reopened for the limited purpose of deciding the issue herein presented, be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Movant Roberto Armendariz-Lozano is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 27th day of August, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE